IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff,	)	
Vs.	)	No: 09 CF 1048
DREW PETERSON, Defendant.	)	

MOTION FOR A NEW TRIAL BASED ON THE INEFFECTIVE ASSISTANCE OF ATTORNEY JOEL BRODSKY

Now comes the Defendant, Drew Peterson, by and through his *pro bono* attorneys, Michelle Gonzalez and John Paul Carroll, and in support of his Motion for a New Trial Based on the Ineffective Assistance of Attorney Joel Brodsky, states as follows:

PREAMBLE

On September 19, 2012, attorneys Michelle Gonzalez and John Paul Carroll received a telephone communication from a member of Mr. Peterson's family. The message was that Mr. Peterson wanted these attorneys to visit him. The attorneys initially visited him at the Will County Video Visitation Center at which time they were informed that a face-to-face conference with their client could only be conducted pursuant to court order. The attorneys then presented themselves to the trial judge who graciously signed an Order allowing them the right to have a face-to-face conference with Mr. Peterson. At that scheduled conference, a number of issues were discussed, among them the issue of the ineffective assistance of attorney Brodsky which ultimately led to the filing of this motion.

This instant motion does not purport to preclude, preempt or prejudice Mr. Peterson's trial attorneys from filing additional post-trial motions arguing legal errors which allegedly occurred during the five week trial. Mr. Peterson has requested his *pro bono* attorneys to present only this one specific allegation, since to have his current trial attorneys advance this argument would create a conflict of interest between him and attorney Brodsky. Mr. Peterson is aware that

if he does not assert the issue of ineffective assistance of counsel in a post-trial motion, the matter would be waived for purposes of appellate review. Finally, it is the belief of Mr. Peterson, after having conversations with attorney Brodsky, that attorney Brodsky would refuse to include this allegation in any post-trial motion. Thus, Mr. Peterson's need to have outside counsel present this issue to the Court.

INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS

The seminal case governing the requirements to successfully present a motion for a new trial based on the ineffective assistance of counsel is found in the United States Supreme Court decision of *Strickland vs. Washington,* 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). "When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must show that counsel's representation fell below an objective standard of reasonableness." (*Strickland,* 466 U.S. 687-88) The defense attorney has "an overarching duty to advocate the defendant's case" and "a duty to bring to bear such *skill and knowledge* as will render the trial a reliable adversarial testing process." [Emphasis added] (*Strickland,* 466 U.S. 688)

Under the Supreme Court's holding in *Strickland* there are "two components to any ineffective assistance claim: (1) deficient performance and (2) prejudice." *Lockhart vs. Fretwell,* 506 U.S. 364, 369, 113 S.Ct. 838, 842, 122 L.Ed.2d 180. (1993) Deficient performance alone is not enough. This can be illustrated by the following example.

Suppose a defense attorney was observed sleeping throughout most of the proceedings in a murder trial. That would certainly be concrete evidence of deficient performance. But suppose further that a busload of nuns had witnessed and video-taped the defendant committing the murder. The ineffective assistance of counsel claim would fail, because with the testimony of the nuns and the videotape, the defendant would have been convicted whether the defense attorney was asleep or wide awake. Thus, it is the second prong of the *Strickland* test that is seemingly the most important.

The Supreme Court of Illinois has held that a defendant must show his "representation fell below an objective standard of reasonableness" and "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been

different." *People vs. Albanese,* 104 Ill.2d 504, 525, 85 Ill.Dec. 441, 473 N.E.2d 1246, 1255 (1984)

"The essence of an ineffective-assistance claim is that counsel's unprofessional errors so upset the adversarial balance between defense and prosecution that the trial was rendered unfair and the verdict rendered suspect." *Kimmelman vs. Morrison*, 477 U.S. 365, 374, 106 S.Ct. 2574, 2582, 91 L.Ed.2d 305 (United States Supreme Court, 1986)

In *People vs. Jackson,* 318 Ill.App.3d 321, 251 Ill.Dec. 848, 741 N.E.2d 1026 (1st Dist, 2000) the Appellate Court reversed a narcotics conviction because the defense counsel, through cross-examination of the state's only witness, brought out the facts needed to convict his client.

> "Without proving the fact that Stidham reached into the bag and gave an object to the unknown person, the State simply did not have a case against the defendant. Since defendant was not in actual possession of the narcotics at issue, his constructive possession of them had to be established through the alleged transaction. Without evidence that Stidham reached into the bag and gave an object to an unknown person, all that remains is a scenario where defendant received an unknown amount of money from an unknown person, who was then seen talking to Stidham, who was later found to be in possession of narcotics. This scenario in no way links the defendant to the narcotics at issue. Thus, without the cross-examination by defense counsel, this element of the State's case could not have been established. We find that this scenario satisfies both parts of the *Strickland* test. For defense counsel to elicit testimony which proves a critical element of the State's case where the State has not done so upsets the balance between defense and prosecution so that defendant's trial is rendered unfair." (741 N.E.2d 1031-32)

The counter-argument of a claim of ineffective assistance of counsel is that the actions of defense counsel were "sound trial strategy." This presupposes that there was an articulable strategy which flowed from sound reasoning. In *People vs. Phillips*, 227 Ill.App.3d 581, 169 Ill.Dec. 746, 592 N.E.2d 233 (1st Dist., 1992) the defense counsel in an armed robbery trial, on cross-examination elicited hearsay facts from a witness that the defendant was likely to have been involved in the armed robbery and that the defendant was involved in another armed robbery as well. The state countered the ineffective assistance of counsel argument by alleging that trial counsel's conduct fell within the wide range of reasonable professional assistance and that defense counsel's conduct provided the defendant with a fair trial. The Appellate Court felt otherwise.

> "We disagree with the State's characterization of defense counsel's actions as 'sound trial strategy.' The trial court recognized the problem of introducing the hearsay testimony at the time the testimony was given and stated so in the sidebar . . . . Because the hearsay

> testimony from Kalita *was devastating* to defendant's case, we find that a mistrial would have been proper. Since defense counsel failed to move for a mistrial, we find his conduct fell below the permissible standards of effective assistance as articulated in *Strickland* and *Albanese.* [Emphasis added] (592 N.E.2d 239)

The United States Supreme Court visited the ineffective assistance of counsel issue in a capital case where the public defenders failed to present mitigating evidence of the defendant's violent upbringing, opting instead to focus on an argument that he was not the actual killer. *Wiggins vs. Smith,* 539 U.S. 510, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003). After the state supreme court denied the ineffective assistance of counsel claim, the federal district court decided that there was ineffective assistance of counsel. The district court was subsequently overruled by the United States Court of Appeals for the Fourth Circuit, which reinstated the conviction and death sentence. After granting *certiorari,* the Supreme Court reversed and remanded the case.

> "We have declined to articulate specific guidelines for appropriate attorney conduct and instead have emphasized that 'the proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'. . . . Here, as in *Strickland,* counsel attempt to justify their limited investigation as reflecting a tactical judgment not to present mitigating evidence at sentencing and to pursue an alternate strategy instead. In light of these [*Strickland*] standards, our principal concern in deciding whether Schlaich and Nethercott exercised 'reasonable professional judgment' is not whether counsel should have presented a mitigation case. Rather, we focus on whether the investigation supporting counsel's decision not to introduce mitigating evidence of Wiggins' background *was itself reasonable.* [Emphasis in original] (156 L.Ed. 485-86)

Thus the focus of any *Strickland* claim of ineffective assistance of counsel is to look at the reasonableness of the decision to do, or not to do, something. And that reasonableness must be grounded in a logical, intelligent and sufficient justification for the action taken.

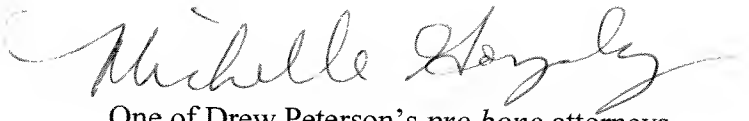
ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF ATTORNEY BRODSKY

1. When attorney Brodsky approached Mr. Peterson with an offer to represent him in the eventuality that he were to be arrested for murder, attorney Brodsky assured Mr. Peterson that he had the experience and talent to represent him adequately. This statement, which Mr. Peterson accepted as true and relied upon, was at variance with the truth. Mr. Peterson's current knowledge and belief is that attorney Brodsky has never represented any defendant at a murder jury trial, or any other felony jury trial, as a lead counsel before his trial.
2. After accepting the representations of attorney Brodsky, Mr. Peterson was encouraged by his attorney to engage in as much publicity as possible because according to his attorney, the more publicity that Mr. Peterson and his attorney received, the greater was Mr. Peterson's chances of not being indicted; and if charged, the publicity would increase Mr. Peterson's chances of an ultimate acquittal. Instead, the publicity dramatically increased the possibility of a conviction, as evidenced by attorney Brodsky's post trial statement to the media that the jury was predisposed to find Mr. Peterson guilty at the start of the trial.
3. Attorney Brodsky assured Mr. Peterson that they would both make money from the publicity attorney Brodsky had generated about the case and that they were in this business venture together. This was the prime motivation of attorney Brodsky, rather than being motivated to provide the best legal defense for his client.
4. When Mr. Peterson was arrested, he told attorney Brodsky that he wanted to immediately demand trial so that the state would have to bring him to trial within 120 days. Attorney Brodsky refused to demand trial and as a result Mr. Peterson was in jail for approximately three years before the case went to trial, during which time attorney Brodsky was continuing his publicity campaign instead of representing the Defendant in a proper and attentive manner. Because of the long delay, certain legislation was enacted which was to the detriment of Mr. Peterson's defense.
5. Mr. Peterson told attorney Brodsky that he wanted certain specific attorneys to be defense attorneys for him, but attorney Brodsky refused the request even though the specific attorneys had offered their services.

6. At one point in the trial, Mr. Peterson asked attorney Brodsky if they could waive the jury and allow the judge to decide the facts. Attorney Brodsky stated that it was legally too late for Mr. Peterson to waive a jury now that the trial was underway.
7. Attorney Brodsky had lied to Mr. Peterson on a number of occasions and when Mr. Peterson discovered the lies and talked about possibly discharging attorney Brodsky and retaining other counsel, attorney Brodsky indicated that in the event he was discharged, he would be ethically bound to publically reveal some things that were discussed between him and Mr. Peterson.
8. Attorney Brodsky made insulting comments to attorney Greenberg during the trial and Mr. Peterson tried to stop this conduct which was adverse to his defense, especially when it occurred repeatedly in front of the jury.
9. Attorney Brodsky's sarcastic comments to other members of the defense caused attorneys to resign from the defense team, all to the detriment of Mr. Peterson's defense.
10. Attorney Brodsky presented Mr. Peterson with an ARDC complaint that attorney Brodsky had created against attorney Steven A. Greenberg. Attorney Brodsky coerced Mr. Peterson to sign the complaint as if he were the author. Mr. Peterson did not want to sign the complaint and, in fact, has no complaint against attorney Greenberg.
11. Mr. Peterson did not suggest or authorize that attorney Steven A. Greenberg should be discharged as has been suggested by attorney Brodsky.
12. That the defense of Mr. Peterson was second in importance to attorney Brodsky's control of the other defense attorneys.
13. Mr. Peterson did not want, suggest, agree to or authorize attorney Brodsky to call attorney Harry Smith as a witness for the defense. The questioning of attorney Smith, a former prosecutor, was done in reckless disregard of the previous filed motions; in reckless disregard of intelligent reason; and in reckless disregard of the vociferous and well reasoned objections of attorney Greenberg. Even the Court cautioned attorney Brodsky about calling the witness, whose testimony was so devastating to the defense, and caused one juror to remark that it was the reason he and other jurors convicted Mr. Peterson.
14. The attached September 24, 2012, letter from attorney Steven A. Greenberg and made part of this motion as further evidence of the ineffective assistance of attorney Brodsky.

For all these reasons, and for any others that may be presented at a hearing, Drew Peterson respectfully requests that he be granted a New Trial.

Respectfully submitted,



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September 24, 2012

Mr. Joel A. Brodsky
Eight South Michigan Ave.
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Re: Drew Peterson

Dear Mr. Brodsky:

After much contemplation, I am writing to offer you a small window to retract your defamatory remarks. I am repeatedly amazed by your ability to lie. The incorrect, dishonest fabrications you spread when you spoke publicly about me during your radio interviews, publicly about yourself during those same interviews, that you wrote in Facebook postings about my termination, and that you included in emails, are scandalous, contemptible, and repulsive.

Rather than simply asking me to withdraw, and allowing me to do so, you had to have me "terminated" i.e. fired. It was childish, designed solely to appear you are in control and others are at fault. While you may be in control, the latter is plainly false. You know that your criticisms are entirely fabricated. You wafted the greatest case, by ignorance, obduracy, and ineptitude. Your effort to blame me is suggestive of a six-year-old child changing the rules of

the game when he falls behind, before taking his ball home, loudly declaring that his opponent cheated, instead of appreciating he was just out of his league[1].

I will allow you 24 hours from the time this letter is transmitted to make a full public retraction and to provide a full public apology. If neither is forthcoming I will forward this letter to my legal counsel for appropriate action. Regardless of whatever you may do, I am sharing this letter with the mainstream media, confident that after reading it they will never again allow you to contaminate the public with your recklessly irresponsible mendacities.

You are nothing more than a bully, willing to say anything to anybody, true or not, in order to get your way. You have threatened the client with revelation to keep control and he, likely recognizing that you know no ethical bounds, thus understands he is trapped. You threatened your former partner, your former co-counsels, and me. Surely one would think that even if you were only slightly observant you would know I do not like being threatened any more than I like losing.

Look in the mirror Joel – ever wonder why every relationship ends in a volley of accusations?

Are you the only one who does not realize how difficult it was for me, co-counsel, the general public (and I am sure the jury) to watch you throughout this trial? This was because of your constant mumbling, fumbling, and bumbling of words, "law-student" level arguments, constant movement, slamming of the table, loud noises, laughing at inappropriate times, absurd objections, inability to ask a question, and overall obnoxiousness.

Before I go further I do want to thank you for providing my children with the opportunity to have worked on this captivating case, to have spent time with me this summer when I was far from home, and to have as they have described it, the "wonderful opportunity

[1] Having studied the termination letter, and after reviewing the rules you cite, I am confident you are without authority to tell me what I can and cannot do, even after being dismissed as one of Mr. Peterson's attorneys. I realize you do not have the authority to proscribe me from either discoursing non-privileged matters or from communicating with other counsel

to sit in on your first ever murder trial". In fact, they have both observed what a blessing it was to have the opportunity to have observed and learned from five (5) remarkable attorneys on your six (6) attorney team.

Now, tellingly, rather than accept any of the responsibility for what was one of the greatest mistakes in the history of jurisprudence, you are trying to make me the fall guy. Need I remind you that you lost everything before I and the other attorneys were involved, including the gun case? Need I remind you that it was you who did not know how to cross-examine Smith, and refused to accept help?

You appear to be the only person who believes that Smith's testimony was not devastating to the case. To support this delusion you must ignore the post-trial comments of jurors, the comments the Judge made in open court when he stated, and I am paraphrasing, that he could not recall another case where the best evidence for the prosecution was put in by the defense, the observations of the prosecutor who considered it *"a gift from God,"* and those of every courtroom observer and the media. *("Neil Schori opened things up, but the lawyer's testimony (Harry Smith) was the thing that got us the most," said by juror Eduardo Saldana and reported by ABC News. "(When) the lawyer (Harry Smith) said 'concealment of a homicide,' I knew he was telling the truth," stated Saldana, reported by the Chicago Tribune. "Supalo also credits the testimony of divorce attorney Harry Smith," reported by CBS).*

Not only is it evident that calling Harry Smith to the stand was suicidal to the defense, but also your horrific questioning made it worse. Take credit, for you single-handedly may have put Drew away for the rest of his life[2].

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[2] Your explanation of why you called Smith reeks of inexperience and shortsightedness. As you have said, Smith was called to impeach Stacy, and provide a motive for her fabrication. That is like saying *"I put in the defendant's confession to impeach the cop that when arrested the defendant, a blond, had red hair."* The cost is not worth the benefit. There was an easy and far less dangerous way to impeach Stacy, but you would not consider or discuss it. In addition to the statement about Kathy, Shori claimed Stacy told him that she had dirt on Drew as a cop and that Drew had killed all his men while in the army. There was no evidence of the former, and

Now, by disregarding the obvious you are again acting in your own self-interest, putting what unquestionably will be perceived as a futile effort to salvage your own reputation ahead of your client's best interest. If you truly cared about the client you would admit your mistake, and include it within your post trial motion (as I wanted to do). If you truly cared about the client you would step aside and allow capable counsel to make a sufficient record, so that the issues were preserved and if necessary reviewed by a higher court. But others and I are confident you will not do so because this case has never been about Drew Peterson, it has always been about Joel Brodsky.[3]

I think back to how you required us to refer to you as "Coach" throughout the trial. When I think of a coach, I think of a competent leader that puts the team first. I find that a little ironic because when I think Joel Brodsky, I think of the self-absorbed, running this "team" like a third-world dictator.

Analogous to a dictator, you were uniquely concerned with appearance over substance. You required us to walk together from court, leaving us to always wait on you. You freaked out if any of us even ventured into the hallway without waiting on you. Like a dictator, you thought it would show support for you. Resembling a dictator, you ignore the facts when spewing your rhetoric. You used censorship by controlling our media contacts. You insisted the media call you "lead counsel." You used lies to suppress knowledge. You prohibited differing views. Your power did not flow from respect. Rather it sprang from control, repression of ideas, and threats.

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the latter was an absurd statement. You could have presented testimony Drew served in Washington, D.C., as a Military Policeman, and killed no one. You could have argued Stacy would say anything, no matter how absurd.

[3] It is a wonder to me how your relationship with Drew began, which, according to every account I have read was by you placing a phone call directly soliciting Mr. Peterson as a client, in violation of the rules, has not been examined. I also wonder why Drew continues to listen to you. Could it be that you are threatening him?

This must be contrasted with a coach as a leader. A coach watches, adapts, and adjusts to what is playing out before him. A coach lets his players utilize their strengths for the benefit of the team. A coach helps the team to win. A coach supports, motivates, challenges, plans. A winning coach benefits when his team wins. By every measure, you were, and are, not a coach.

Nonetheless, when the idea to change your name to captain arose I thought it was too little, too late. I know the discussion that changing your name to captain was because it implied that you were then going to "sink the ship." I disagree. The ship was sunk back when Drew made the life ending decision to hire you. Fortunately there were five rescuers in the form of attorneys who came to save the ship. Unfortunately, as they were finally bringing the ship back afloat, you ignored them and sunk the ship for good.

Scandalously, you wrote that I revealed defense strategies to the media. Never happened! Perhaps you were blurring with what you divulged during your many interviews. How many times did we have to lean over and tell you to be quiet as you muttered to the media in the morning, noon, and after court, our thoughts and impressions, inside stuff? Or jump in to talk over you as you stated things that were simply legally and/or factually wrong?

Surely by now you appreciate the damage your pre-indictment media blitz caused your client.[4] Many people, including Will County Assistant State's Attorneys assigned to this case, have remarked that at best the coverage hastened an indictment, and at worst caused it. As the Tribune recently recognized "...Peterson's and Brodsky's sophomoric television and radio appearances in the weeks after Peterson's fourth wife, Stacy, disappeared were far more damaging to his client's case than a made-for-TV movie about Peterson." Yes, my discharge was not the first time you had appeared in the media with no one's interest in mind but your own.

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[4] Even the Judge questioned your appearances. Remember when the admission of the videos was discussed and the Judge wondered whether any competent counsel would have had his client appear as you had?

I likewise hope you were not confusing my professional, articulate, and sensible commentary with your outpouring of confidences to Michael Sneed. Again, by now you naturally realize the damage you caused when you routinely divulged confidential information to Sneed, or otherwise tried to garner sympathy for Drew through her column.[5] What was the benefit to the client? None. But to you, apparently having an item in a gossip column that you threw your wife a birthday party outweighed the client's best interest. And you did not stop with the trial. Oh no! You had Sneed write about Thomas Peterson's Facebook post after his father was convicted. Not only did you breach Thomas's privacy, but also you explcited him.

In addition to the foregoing, the following are more obviously and patently false statements you have made, that are not, and could not, be considered statements of opinion[6]:

A. You claimed on WGN and WLS Radio, as well as during abundant television interviews, that the decision to call Harry Smith was supported by the entire defense team. Your claim has no basis in fact. It is well known that it was your *unilateral* decision to commit the worst mistake by a trial lawyer since Christopher Darden asked O.J. to try on the glove[7]. No one supported your decision. Ralph and Darryl were not present; Joe, Lisa and I all argued against it (even the Judge tried to deter you). Notably, our determination to thwart you from convicting your client was well-documented by the press, who witnessed as we chased you everywhere, trying

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[5] Perhaps after reviewing this letter Ms. Sneed will post a retraction of her regurgitation of your comments about me, which are contradicted by her own paper's coverage and were irresponsibly published. I would expect no less.

[6] You have lied about me, and others. As an attorney you are ethically obligated not to lie.

[7] Perhaps you find inspiration for your cowardice in Mr. Darden, who I am sure is one of your legal heroes, given all you have in common. He waited until years after Johnny Cochran died to claim Johnny cheated, a baseless accusation designed solely to justify his own inadequacy. http://abcnews.go.com/US/oj-simpson-trial-prosecutor-accuses-attorney-johnnie-cochran/story?id=17194970 At least you did not wait until after I died to make your deceitful accusations.

to have a dialogue. Surely you recall how you scampered from us, declining to listen, which is why I had to pursue you into the hallway where my pleas were overheard. You, the captain of the ship, unilaterally sunk the ship by calling Harry Smith and permitting him to testify to conversations that were obviously privileged, and understandably destructive. You alone made the choice, and you are simply not professional enough nor man enough to own up to it. Fortunately for Drew the fact that you made this egregious error will not, if now properly flushed out, be fatal to either his appeal or any post-conviction relief. Your claim(s) otherwise are laughably false, and can be refuted by many.

B. You dishonestly stated on WGN Radio that esteemed attorneys Sam Adam, Jr. and Terry Sullivan discussed with you, prior to your calling Harry Smith, whether you should do so, and that they both supported that decision. That statement is a complete and total lie. You tarnish them with your lie.

C. You have violated attorney-client privilege (a concept you obviously have no respect for) in advising the public that the client wished to call Harry Smith. Whether that statement is true or not is irrelevant (that is why the concept is not called "ineffective assistance of client")[8]. The fact is that if any discussion took place it is a

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[8] *"Citing the American Bar Association (ABA) Standards for Criminal Justice (see 1 ABA Standards for Criminal Justice § 4- 5.2(a) (2d ed. Supp.1986)), this court has recognized three decisions that are ultimately for the defendant to make after full consultation with counsel: what plea to enter, whether to waive a jury trial, and whether to testify in his or her own behalf. This court has recognized that a criminal defendant also has a fundamental right to decide whether to appeal. People v. Ramey (1992), 152 Ill.2d 41, 54, 178 Ill.Dec. 19, 604 N.E.2d 275; accord Jones v. Barnes (1983), 463 U.S. 745, 751, 103 S.Ct. 3308, 3312, 77 L.Ed.2d 987, 993.*
In Ramey, this court further held that beyond those four decisions, however, trial counsel has the right to ultimately decide matters of trial strategy and tactics after consulting with defendant. (Ramey, 152 Ill.2d at 54, 178 Ill.Dec. 19, 604 N.E.2d 275.) The comments to section 4-5.2 of the ABA Standards for Criminal Justice explain as follows: "Many of the rights of an accused, including constitutional rights, are such that only trained experts can comprehend their full significance, and an explanation to any but the most sophisticated client would be futile.

discussion that ethically should remain confidential, rather than being made public in your attempt to justify your own ineptitude. I thought even the most inexperienced criminal practitioner, a category that you embrace, understands that there are only four (4) decisions that belong to the client:

1. Whether to plead guilty or not guilty;
2. Whether to have a bench trial or a jury trial;
3. Whether to testify or not; and
4. Whether to appeal.

D. You claim in your Facebook posting and during media interviews that I never quarreled with you not to call Smith, only balked after he testified. As set forth above, you know that is false. Relying upon your view or revisionist history, you then claim it was only after he testified that I objected. Again, completely false. The exact opposite of what you have spewed is the truth. I fought before Smith was called, but after you called Smith and he devastated the defense, as a team player, I went out in front of the media and vociferously defended your actions, because that was in the client's best interest and in the best interest of the case.

E. You falsely claim in your emails and during various media interviews that I never challenged Harry Smith's ability to testify, either pre-trial or at trial, referring to that

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*Numerous strategic and tactical decisions must be made in the course of a criminal trial, many of which are made in circumstances that do not allow extended, if any, consultation. * * * Some decisions * * * can be anticipated sufficiently so that counsel can ordinarily consult with the client concerning them. Because these decisions require the skill, training, and experience of the advocate, the power of decision on them must rest with the lawyer, but that does not mean that the lawyer should completely ignore the client in making them. The lawyer should seek to maintain a cooperative relationship at all stages while maintaining the ultimate choice and responsibility for the strategic and tactical decisions in the case." 1 ABA Standards for Criminal Justice § 4-5.2, Commentary, at 4-68 (2d ed. Supp.1986)."*

People v. Brocksmith, 162 Ill. 2d 224, 231-32, 642 N.E.2d 1230, 1233-34 (1994)

as "yet another failure on Greenberg's part". Those statements are 100% false[9]*. You are aware that I filed pre-trial motions challenging Smith's testimony as you signed them.*[10] *You were present when Harry Smith was called as a witness at a pre-trial hearing and questioned by me. You were present when the Judge indicated certain conversations were privileged and recognized that the Court had a gatekeeper function in keeping things out. You even wrote about my success in a June 16 posting on your law firm's Facebook page "The state is finding out that allowing an attorney to reveal privileged communications is a double edged sword, and that the other edge may in fact be the sharpest. Judge Burmila ruled that Kathy Savio's divorce attorney will not be allowed to reveal only part of the story, and that if he is going to testify he must testify about "inculpatory" statements (ie. statements that show that she is guilty) Kathy Savio made regarding battery charges against her. Indications are that Kathy Savio took the stand and denied her guilt, and if that is the case, then she lied under oath in the battery case. If that is shown to be true then nothing Kathy Savio said can be believed or taken as reliable evidence in a court of law". (the misspellings are in your posting). Furthermore, you were present in court on a multitude of occasions when, during the trial, we argued with the prosecution regarding Harry Smith's testimony.*

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[9] *Please note that while I may make reference to specific documents and/or proceedings, I am not going to provide documentation of the same to you since you were always the only signatory on the document(s) or present for the proceeding(s), and are therefore aware of context and testimony.*

[10] *Parenthetically, I heard your comments that Harry Smith perjured himself, and that his perjury will cause a reversal. Respectfully, no chance. If Harry Smith perjured himself any competent counsel would have attacked him before the jury. You, unfortunately, were unable to do so, even after the Judge granted you the leeway to consider Mr. Smith an adverse witness (remember you asked and the Judge said no, then I argued and he reversed himself).*

F. *You falsely wrote in your Facebook posting, and repeated in the media, that I "failed to bring the most important motions, such as to bar the 2004 'botched investigation evidence.'" Those statements are knowingly false. You are aware that I filed a "Motion and Memorandum to Prohibit the State from Proceeding Under a Theory that has as its Foundation Argumentum Ad Ignorantiam", a "Motion in Limine to Prohibit the State from Arguing that this was Initially a Botched Investigation as Evidence of Drew Peterson's Guilt," and a "Motion to Dismiss Based on the Destruction of Potentially Exculpatory Evidence and for an Evidentiary Hearing", as well as Replies in support of several of those Motions. You signed the Motions. Each challenged the 2004 "Botched Investigation." You are also aware that the Judge indicated that he was going to be mindful of the State's attempt to introduce evidence of a botched investigation but that he would not be able to rule prospectively, instead reserving his ruling until such time as the State sought to present the evidence. Finally, you are aware that I raised this issue in writing when attempting to limit the prosecution's opening statement.*

G. *Your claim that I failed to object "potentially causing the loss of several important appellate issues" is likewise false. If you look at the trial transcript, my objections were appropriate and typically sustained. Contrary to what you claim, I was only relieved of the job of making objections when I refused to object simply to irritate others. Fortunately, until you blew the case, I continued to object, while you, on the other hand, objected just to object. Not only did you object to one of my questions while I examined a witness, embarrassing yourself, but you needlessly objected simply because you had a stated goal of getting under the prosecutor's skin. Need I remind you of the email you sent demanding all of us to object simply and solely to*

cause State's Attorney Glasgow to "lose it".[11] *What you failed to realize, likely as a result of your inexperience, was that you were offerding the jury with your repeatedly nonsensical objections.*

H. *You wrote and said that while I won many motions, I lost the big ones, such as keeping out unreliable hearsay and barring the "hit man" testimony. Again, your statements are either false or, in this case, distorted. No, I did not win every motion. And it is true that I did not succeed in excluding all of the hearsay as unreliable, but some I did, such as Scott Rossetto. It is also true that I lost the "hit man" motion. However, your historical take on that issue must ignore the fact that you provided the case law cited by the Judge, over the objection of the rest of the team. Because you could not allow anyone to do their job without sticking your inexperienced hands into it, on more than one occasion (think the mistrial motions), you unilaterally contacted the Court. As it relates to the hit man evidence, you provided the Court with civil cases that were cited in ruling against us. Had you not provided those cases, i.e. done the prosecution's job for them, perhaps the ruling would have been different.*

I. *You wrote that I was frequently absent from the defense table because I was "hanging out at the press room (which had a live audio feed) or by the truTV television tent". That is an absolute false statement. I did not miss the testimony of a single witness in this case. I was there for the entirety of the trial (perhaps I wandered out a few times to the washroom). I further call upon you to point out a single time I missed any on-the-record proceeding because I was outside by the truTV tent. You will be unable to because that <u>never</u> happened. You have shamefully claimed I was absent from court when I was not.*

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[11] *Or how about the time you emailed and told me to bring the Sun Times to court and to let Mr. Glasgow see me reading the editorial criticizing him to "send him over the edge." I refused.*

J. *You wrote that I "failed to attend almost all after-court team meetings". Again, an absolutely false statement. We never met as a complete team, we never met before or after court, before the trial, or otherwise. There were never any after-court team meetings, so I could not have missed a single one (the day that we drafted the first mistrial motion we did meet, and I stayed long after court to work on that Motion, hours after everyone except for you had left). I repeatedly expressed to you, as the "coach", my concern you never had any team meetings. You know that after court (on both days when all six lawyers were present or not), Joe and Lisa Lopez left the courthouse immediately because they had child care issues, Ralph and Daryl left the courthouse to either go home or back to the hotel, I left the courthouse to return to the hotel, and you were the only lawyer who ever went back to the office. There are ample witnesses, as well as television footage, that will bear this out. I challenge you to demonstrate that there was a single meeting that I missed, after court or otherwise.*

K. *You wrote that I was unprepared for cross-examination, fumbling for papers while the witnesses were on the stand. Again, an absolutely false statement that can be refuted by every spectator, all of the court personnel, and likely the Judge. Indeed it was you who was constantly mumbling, fumbling and bumbling as you attempted to examine witnesses, or otherwise offer arguments, keeping us all on the edge of our chairs watching, hoping that somewhere during the examination a competent attorney would be revealed.*

After reading your false email posting and hearing your nonsensical rants I sent you an email that said, "your comments are false and defamatory" demanding that you take them down. In response you wrote back to me and Drew's other attorneys the most outrageous email I have ever seen. In the last line you attacked my family with vile and disgusting comments. The comment was both personally and professionally uncalled for.

This followed a constant barrage of offensive emails and comments, all during the trial. It followed your advising reporters, in front of my son, that his mother wanted to be the first to sleep with Drew (you used the F word) when he got out. Utterly reprehensible.

Unfortunately, months ago I had made the mistake of confiding in you that my wife had decided to leave me. Throughout the trial you repeatedly made comments about my marital situation, and my failed marriage, both to me and to my children, who were assisting with the defense. You made them in front of others.

Then, apparently not satisfied, in a follow-up email to the above comments, you called me mentally ill, again referenced my situation with my wife, and concluded that [I] "better go shoot [my]self". What kind of a person writes that? Such comments are beneath any professional; in fact they are beneath any decent human.

In addition, in that email you repeated many of your same erroneous accusations, adding two:

A. That I failed to introduce the Scott Rossetto emails under Illinois Rule of Evidence 806 (I am assuming that you are referring to text messages because there were no emails). Perhaps you should review Rule 806 and the interplay between Rule 806 and Rule 404. Evidence of bad character is not admissible simply to show bad character. Since Rossetto was barred from testifying on due process grounds (yes unreliable due process hearsay), something no observer had ever seen happen before in a criminal case, the text messages became irrelevant. Moreover, it would have been illogical to show sex-texting between Stacy and Rossetto (the most salacious of the text message were not with Rossetto but were with somebody else) because it would have simply shown that the two of them were developing a close relationship. The jurors certainly could have construed that as making it more likely that she would confide her deepest, darkest secrets about Drew to Rossetto.

B. That I "didn't prepare at night because of [my] nightly drinking". As with your other accusations, I would like to see any proof that my occasional evening cocktail interfered with anything in this case. In this regard you should be mindful of the fact that many people were staying at the hotel and so my "nightly drinking" was usually with other prominent and respected individuals, all of whom I am confident will opine that I was not over-served, nor did I neglect my work. I do concede that the last day of court, during the jury instruction conference, I was feeling a little bit sluggish because I had to numb my mind after you called Harry Smith.

Having explained and addressed your lies, callousness and errors, I do want you to know that after working with you I concur with the opinion that other lawyers and judges share: you are an inept, incompetent lawyer, and an ungrateful individual, who was not, and is not, concerned with the client's best interest, but motivated solely by your incessant quest for yourself. You are the rare attorney whose lack of skills should be explored, since they are obviously below the minimum level required for any member of the bar. Personally and professionally you are so obnoxious, hateful and inappropriate that you are likewise unfit.

You displayed unmitigated gall when you, the night before the trial began, had a press conference at which you smoked a pre-victory cigar. For absolutely no reason, other than your own ego, you caused Piers Morgan to cancel a trip that Joe and I were to make, instead offering an exclusive interview with you (which was not surprisingly rejected). You likewise tried to ruin my trip to be on the Judge Jeanine show, only agreeing I could appear if they gave you a one-on-one segment before having you appear jointly with me. And how do you accomplish this? Because you use Drew as your pawn for your own selfish gain, telling everybody that, if they do not give in to your demands they will not get an interview with Drew. What will you do now?

I do not know why you have chosen to make me the fall guy when it was apparent to everyone and any one who witnessed the proceedings that you were not in the same league as

the other attorneys. Perhaps Drew has a burning desire to spend the rest of his life in the penitentiary. I am certain, having spent time with you, you can help him to fulfill that goal.

I wish you the best of luck in your future endeavors and truly regret the fact that Drew will continue to suffer with you as his lawyer. He deserves better, but of course when he has better you cannot let them do their job.

Sincerely,

Steven A. Greenberg

SAG/mmg

cc: Drew Peterson
All counsel of Record
Media